

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

GERALD J. KLEIN, on behalf of himself and
all similarly situated; and RODERICK FORD,

Plaintiffs,

vs.

TD AMERITRADE HOLDING
CORPORATION, TD AMERITRADE, INC.,
and FREDRIC TOMCZYK,

Defendants.

8:14CV396

ORDER TO SHOW CAUSE

This matter comes before the court on review of Defendants' Status Report, filed May 6, 2025 ([Filing No. 356](#)), and a review of the docket.

This case was filed in this court in 2014, and the Amended Complaint was filed by "Plaintiff Kwok L. Shum, Roderick Ford ('Lead Plaintiffs') and Gerald J. Klein (together with Lead Plaintiffs, 'Plaintiffs') on April 15, 2015. ([Filing No. 75](#)). Orders of this court prompted several appeals to the Eighth Circuit Court of Appeals. Most recently, the Eighth Circuit reversed the order certifying a class and the matter was remanded to this court for further proceedings. The mandate was docketed on September 24, 2024. ([Filing No. 346](#)).

The parties were ordered to confer and file a joint status report regarding their respective positions following remand. On October 3, 2024, the parties filed a Joint Status Report which stated:

In light of the Eighth Circuit's rulings reversing (and therefore denying) class certification, Defendants have notified Plaintiff and the Court that to the extent plaintiff decides to move forward with his individual claims, but does not assent to arbitration before the Financial Industry Regulatory Authority, Inc. ("FINRA") in accordance with his customer agreements to TD Ameritrade, Defendants will again move to compel arbitration. Plaintiff's counsel has informed Defendants' counsel that plaintiff intends to pursue his individual claims and will assent to arbitration.

Accordingly, the parties jointly request that the Court enter an order requiring that plaintiff pursue his individual claims, if at all, in arbitration before FINRA.

([Filing No. 349](#)).

In a footnote to the Joint Status Report, Plaintiff Ford noted that Plaintiff Shum was withdrawn as lead plaintiff by an order dated November 14, 2016. ([Filing No. 349](#) n. 1). There is no mention of Plaintiff Klein in the status report, and a review of the docket does not reveal when, or if, Klein was withdrawn or terminated from this case. Plaintiffs' recent filings indicate Roderick Ford is the only active plaintiff at this time. Plaintiff's Counsel is directed to advise the court whether Klein may be terminated as a plaintiff.

Following the October Joint Status Report, the Appointed Special Master stayed the matter pending arbitration and set a status report deadline to advise the court of the status of the arbitration proceedings. The order directed the parties to file a status report every 60 days thereafter. ([Filing No. 350](#)). The December 17, 2024 joint status report, filed by plaintiff, indicated plaintiff was preparing a demand for arbitration, but had not yet filed it with FINRA. ([Filing No. 352](#)). The March 5, 2025 status report was filed by Defendants only. Defendants indicated Plaintiff had not yet filed with FINRA a demand for arbitration. ([Filing No. 354](#)). The May 6, 2025 status report was also only submitted by Defendants and said the same: "Defendants understand that Plaintiff has not filed with FINRA a demand for arbitration."

NECivR 41.2 states, in relevant part: "At any time, after appropriate notice, a case not being prosecuted with reasonable diligence may be dismissed for lack of prosecution." Plaintiff Ford previously assented to arbitration, but does not appear to be actively pursuing it. Accordingly,

IT IS ORDERED:

1. Plaintiff Roderick Ford shall have until May 14, 2025 to show cause why plaintiff's complaint should not be dismissed pursuant to NECivR. 41.2 for want of prosecution. Plaintiff's response should include an update as to the status of the arbitration proceedings with FINRA.
2. Plaintiff's Counsel shall advise whether Plaintiff Gerald J. Klein may be terminated as a plaintiff in this action.
3. The failure to timely comply with this order may result in dismissal of this case without further notice.

Dated this 7th day of May, 2025.

BY THE COURT:

s/ Ryan C. Carson

United States Magistrate Judge